



May 22, 2015

Dr. John O'Donnell
President
Massachusetts Bay Community College
50 Oakland Street
Wellesley Hills, MA 02481

UPS Tracking #
1Z A87 964 02 9607 1076

RE: Final Program Review Determination
OPE ID: 00217100
PRCN: 201140127617

Dear President O'Donnell:

The U.S. Department of Education's (the Department) Clery Act Compliance Team issued a program review report on October 14, 2014, regarding Massachusetts Bay Community College's (MassBay; the College) compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act of 1989 (*DFSCA*). Following two extensions, the College submitted an acceptable response to the Department's report. The original text of the program review report is incorporated into this Final Program Review Determination (FPRD). MassBay's response and any supporting documentation submitted with the response are being retained by the Department and are available for inspection by MassBay upon request. Please be advised that this FPRD and any supporting documentation may be subject to release under the Freedom of Information Act and/or may be provided to other oversight entities after it is issued.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise MassBay of the Department's final determinations and to close the review. Please note that this FPRD includes information about two significant findings regarding MassBay's failure to comply with the requirements of the *Clery Act* and the *DFSCA*. Because these findings do not result in a financial liability, they may not be appealed.

Due to the serious nature of these findings, this FPRD is being referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of a possible adverse administrative action. Such action may include a fine and/or the limitation, suspension or termination of the eligibility of the institution to participate in the Title IV, HEA programs pursuant to 34 C.F.R. Part 668, Subpart G. If AAASG initiates any such action, additional

information about MassBay's appeal rights and procedures for filing an appeal will be provided under separate cover.

Record Retention:

Records relating to the period covered by this program review must be retained until the latter of resolution of the violations identified during the review or the end of the regular retention period applicable to all Title IV-related records including *Clery Act* and *DFSCA*-related documents under *34 C.F.R. §668.24(e)*.

Thank you for the courtesy, cooperation, and patience shown to us throughout the program review. If you have any questions about this FPRD or the program review process, please contact Ms. Jannetta Guinhouya at (202) 377-3152.

Sincerely,



James L. Moore, III
Compliance Manager
Clery Act Compliance Team

cc: Mr. Vincent O'Connell, Captain, Public Safety, MassBay voconnell@massbay.edu
Mrs. Tammy Lee, Interim Director of Financial Aid, MassBay tleee@massbay.edu

Enclosures:

Final Program Review Determination

Prepared for:
**Massachusetts Bay
Community College**

OPE ID: 00217100
PRCN: 201140127617

Prepared by:
U.S. Department of Education
Federal Student Aid
Clery Act Compliance Team

Final Program Review Determination

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The Clery Act and the DFSCA

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), in §485(f) of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. §1092(f), is a Federal consumer protection statute that provides students, parents, employees, prospective students and employees, and the public with important information about public safety issues on America's college campuses. Each domestic institution that participates in the Federal student financial aid programs under Title IV of the HEA must comply with the *Clery Act*. The institution must certify that it will comply with the *Clery Act* as part of its Program Participation Agreement to participate in the Title IV, Federal student financial aid programs.

The *Clery Act* requires institutions to publish and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property. These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority (CSA). A CSA is any institutional official who is 1) designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals and/or 2) an official that has significant responsibilities for student life or activities such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches.

The ASR also must include more than 50 statements of policy, procedures, and programmatic information regarding issues of student safety and crime prevention. The *Clery Act* also requires institutions to maintain a daily crime log that is available for public inspection and to issue timely warnings and emergency notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. In addition, the *Clery Act* requires institutions to develop emergency response and evacuation plans. Starting in July 2015, amendments to the *Clery Act* that were included in the Violence Against Women Reauthorization Act of 2013 will be fully implemented. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur. Institutions that maintain student residential facilities must also publish and distribute an Annual Fire Safety Report (AFSR) containing fire statistics and important policy information about safety procedures, fire safety and suppression equipment, and what to do in the case of a fire.

The *Clery Act* is based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choices and can take an active role in their own personal safety and to secure and protect their personal property. For that reason, the office of Federal Student Aid (FSA) must ensure that the information disclosed in each ASR and AFSR is accurate and complete. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance and training programs and materials as well as monitoring and enforcement through the program review process.

FSA may initiate a campus crime program review as a result of a complaint or on public reports about crimes and crime reporting and prevention at a particular institution. FSA also conducts Quality Assurance Reviews in cooperation with the FBI's Criminal Justice Information Service

(CJIS) Audit Unit. Program reviews entail in-depth analysis of campus police and security records and interviews with institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine if they are accurate and meet the needs of the campus community.

Because more than 90% of campus crimes are alcohol and drug-related, the Secretary of Education has delegated oversight and enforcement responsibilities for the Drug-Free Schools and Communities Act (*DFSCA*), in §120 of the HEA, 20 U.S.C. §1011(i) to FSA. The *DFSCA* requires all institutions of higher education that receive Federal funding to develop and implement a comprehensive drug and alcohol abuse prevention program (DAAPP) and certify to the Secretary that the program is in place. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each institution must provide a DAAPP disclosure to all current students (including all students enrolled for any type of academic credit except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse as well as information about available counseling, treatment, and rehabilitations programs, including those that may permit former students or employees to return following expulsion or firing.

The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll after the initial distribution and for employees who are hired at different points throughout the year.

Finally, the *DFSCA* requires institutions to conduct a biennial review to determine the effectiveness of its DAAPP; to identify areas requiring improvement or modification; and to assess the consistency of its enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation.

Proper implementation of the *DFSCA* provides students and employees with vital information about the detrimental consequences of illicit drug use and alcohol abuse. The conduct of a meaningful biennial review provides the institution with quality information about the effectiveness of its drug and alcohol programs. Any failure to implement these requirements may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime. The *DFSCA* is monitored and enforced by the Department.

A. Institutional Information

**Massachusetts Bay Community College
50 Oakland Street
Wellesley Hills, MA 02481**

Type: 2 Year, Public

Highest Level of Offering: Associate's Degree

Accrediting Agency: New England Association of Schools and Colleges-(NEASC)

Current Student Enrollment: 5,400 (approx.)

% of Students Receiving Title IV: 46% (approx.)

**Title IV Participation, Per U.S. Department of Education
(Postsecondary Education Participants System):**

2010-2011 Award Year

Federal Pell Grant	\$ 4,944,295
Federal Direct Loan Program	\$ 81,305
Federal Supplemental Education Opportunity Grant Program	\$ 103,485
Federal Work-Study Program	\$ 4,006,635

DL/FFEL Default Rate: 2009 - 7.4%
2008 - 3.7%
2007 - 4.7%

The Institution:

In 1961, Massachusetts Bay Community College (MassBay; the College) was chartered by the Commonwealth of Massachusetts. After operating at temporary locations of Boston and Watertown, the Massachusetts Board of Regional Community Colleges, chose the location of the Elizabeth Seton High School in Wellesley Hills, MA for MassBay's permanent campus in 1973. In 1990, an additional campus was established in Framingham, MA. As a community dedicated to student achievement, MassBay offers Associate's degrees and certificate programs. At the time of the site visit, MassBay had more than 5,500 students at its Wellesley Hills and Framingham campuses.

MassBay's Public Safety Department operates under a two-tiered system comprised of both police officers and contract security guards. MassBay's police officers are sworn Deputy Sheriffs in both Middlesex and Norfolk counties, licensed in accordance with Massachusetts General Law 22C, Section 63. In addition, MassBay's police officers are licensed and share the same police authority as municipal police officers for any criminal offense committed in or upon the campus geography. The contract security officers have no law enforcement or police authority and are not empowered to make arrests. The contract security officers are trained to contact local authorities when situations arise where a police presence is required.

B. Scope of Review:

The Department's Clery Act Compliance Team conducted a campus crime program review at MassBay. The review started with a site visit in November 2010.

The objective of the review was to evaluate MassBay's compliance with the *Clery Act* at §485(f) of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. §1092(f). MassBay was selected from a sample of institutions of higher education with sworn police departments. The review consisted of an examination of MassBay's police incident reports, arrest records, disciplinary files policies and procedures related to the *Clery Act*. In addition, interviews were conducted with MassBay officials with campus safety-related responsibilities.

The Department reviewed MassBay's police incident and arrest reports generated for the calendar year 2009. These reports documented Part I and Part II offenses reported to the MassBay police department. From this report, a sample of Part II arrests for certain liquor, drug, and weapons offenses was also selected.

Finally, the Department examined the College's policies and procedures related to campus safety and crime prevention that were in effect during the review period.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning MassBay's specific practices and procedures must

not be construed as acceptance, approval, or endorsement of those specific policing and campus safety practices, procedures, and policies. Furthermore, it does not relieve MassBay of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs, including the *Clery Act*. Finally, the Department emphasizes that this FPRD only addresses violations and weaknesses that were identified as occurring during the stated review period.

C. Findings and Final Determinations

During the review, two serious findings of noncompliance were noted. The findings identified in the Department's October 14, 2014 program review report appear in italics below. At the conclusion of each finding is a summary of MassBay's response and the Department's Final Determination.

Finding 1: Crime Awareness Requirements Not Met - Failure to Publish and Distribute Annual Security Reports

Citation Summary:

The Clery Act and the Department's regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees, a comprehensive Annual Security Report (ASR) that contains, at a minimum, all of the statistical and policy elements enumerated in 34 C.F.R. §668.46(b). With the exception of certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet the publication and distribution requirements. § 485(f) of the HEA; 34 C.F.R. §668.46(b).

The ASR must be published and actively distributed as a single document. Acceptable means of delivery include regular U.S. Mail, hand delivery, or campus mail distribution to the individual or posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e)(1). These regulations also require institutions to provide a notice containing this information to all prospective students and employees. This notice must also advise interested parties of their right to request a paper copy of the ASR and to have it furnished upon request. 34 C.F.R. §668.41(e)(4).

An institution's ASR must include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Statistics for certain hate crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published

for the following geographical categories: 1) on campus; 2) on-campus student residential facilities; 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. 34 C.F.R. §668.46(c)(1).

The ASR also must include several policy statements. These disclosures are intended to inform the campus community about the institution's security policies, procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the ASR itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention, and adjudication must also be disclosed. Institutions also must provide detailed policies of the issuance of timely warnings, emergency notifications, and evacuation procedures. As noted above, all required statistics and policies must be included in a single comprehensive document.

Each institution must also submit its crime statistics to the Secretary for inclusion in the Department's "Campus Safety and Security Data Analysis Cutting Tool." 34 C.F.R. §668.41(e)(5).

Noncompliance Summary:

MassBay violated multiple provisions of the Clery Act. Most significantly, the College failed to prepare and publish Annual Security Reports (ASR) in 2008 and 2009 and in all years prior to the review period. As a result of these violations, MassBay also failed to actively distribute ASRs to enrolled students and current employees and also failed to actively notify prospective students and employees about the availability of such a report.

After the commencement of the program review, MassBay began work on a 2010 ASR and submitted a copy of the report to the Department. Several significant deficiencies were identified during the Department's examination of this report. Specifically, several required campus safety and crime prevention policy disclosures were determined to be inadequate to provide actual notice to the campus community in an area of mandatory disclosure or were omitted entirely. The following mandatory disclosures were either omitted or were found to be inadequate:

- A statement disclosing whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures;
- A statement of policy regarding campus law enforcement in their Annual Security Report. This statement must contain the following elements:

- Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes
 - Policies for preparing the annual disclosure of crime statistics;
- A statement that describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics;
- A description of the type and frequency of programs designed to inform students and employees about the prevention of crimes;
- A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities;
- A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws;
- A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws;
- A description of the law enforcement authority of the campus security personnel;
- A description of the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such written memoranda of understanding (MOU), for the investigation of alleged criminal offenses;
- Campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement of policy must include:
 - A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses
 - Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offenses should be reported; information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel

- *Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel*
- *Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses*
- *Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;*
- *Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that:*
 - *The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding*
 - *Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense*
 - *Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses;*
- *Procedures in the ASR to immediately notify the campus community upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees are overly general, and do not specify the methods that will be used to notify the campus community;*
- *A statement that the institution will, without delay, determine the content of the notification and initiate the notification in such an emergency:*
 - *A description of the process the institution will use to confirm there is a significant emergency, determine who to notify, determine the content of the notification, and initiate the notification system*
 - *The positions and titles of the individuals who will confirm that there is a significant emergency, determine the content of the notification to students, who will send the notification, and initiate the notification*
 - *Plans to conduct tests of the emergency response and evacuation procedures, and documentation of such tests*

- *Accurate and complete crime statistics for the three most recent calendar years concerning the occurrence in or on non-campus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority;*
- *Accurate and complete arrest and disciplinary referral statistics for Liquor Law Violations, Drug Law Violations, and Illegal Weapons Possession (If no persons were arrested and/or referred in a particular category in any given calendar year then a “0” (zero) must have been entered in this specific category); and,*
- *Accurate and complete hate crime statistics for all bias-related offenses in Clery-reportable categories (If no such offenses were reported in any given calendar year then a “0” (zero) must have been entered in this specific category) were not reported separately from those for other incidents of crimes reported. If no hate crimes were reported in a particular category for a specific year then a “0” should have been entered in the category in the ASR.*

Required Action Summary:

As a result of these violations, MassBay must develop and implement policies and procedures that will govern the preparation, publication, and distribution of ASR and ensure that all facets of the process are carried out in a manner that meets Federal regulations. The procedures must also specifically articulate how prospective students and employees will be notified of the report’s availability. Using the policies as a guide, MassBay must prepare and publish an accurate and complete 2014 ASR that includes all of the statistical disclosures and policy, procedure and programmatic information required under 34 C.F.R. §668.46(b), if it has not already done so. If a 2014 ASR was published and distributed, a copy of the report and evidence of active distribution must accompany the College’s response to this program review report.

In addition, MassBay must submit copies of its 2013, 2012, and 2011 ASRs with proof of distribution as well as a copy of its new and revised internal campus safety and crime prevention policies and procedures. Furthermore, the College must review all incidents reports prepared by or received from campus security authorities and/or local law enforcement agencies with jurisdiction for any part of either campus to evaluate the accuracy and completeness of its crime statistics for 2013, 2012, 2011, 2010, and 2009 and prepare a summary report of its findings. The summary report must be submitted it as part of its response to this program review report.

The Department is encouraged by the current administration’s stated commitment to improving the campus safety and drug and alcohol abuse prevention programs at MassBay and is also aware that the College has already undertaken certain corrective actions and remedial measures since the time of the site visit. As part of its response, the College is encouraged to provide additional details about these initiatives including its efforts to implement the new Clery Act provisions that were included in the Violence Against Women Reauthorization Act of 2013.

As noted above, the exceptions identified in this finding constitute serious violations of the Clery Act that by their nature cannot be cured. There is no way to truly “correct” a violation of this type once it occurs. MassBay will be given an opportunity to develop and distribute an accurate and complete ASR and address other deficiencies, and by doing so, will finally begin to bring its overall campus security program into compliance with the Clery Act as required by its PPA. However, the College is advised that these remedial measures, whether already in place or planned for the future, cannot and do not diminish the seriousness of these violations neither do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

Based on an evaluation of all available information including MassBay’s response, the Department will determine if additional actions will be required and will advise the College accordingly in its FPRD.

MassBay officials may wish to review the Department’s “Handbook for Campus Safety and Security Reporting” (2011) during the preparation of its response. The Handbook is available online at: <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The regulations governing the Clery Act can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49.

Institutional Response:

In its official response, MassBay concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following:

In direct response to the review team’s visit, the College created and hired a Deputy Director of Public Safety for Emergency Planning and formed a Clery and Public Safety Committee (CAPS). The new Director has the responsibility for emergency operations and training at MassBay. The Committee meets twice monthly and has the responsibility of implementing policies and procedures to ensure ongoing compliance with the *Clery Act* as well as the duties of preparation and distribution of the ASR.

MassBay prepared and distributed a 2014 ASR and provided notice of the distribution sent to all faculty, staff, and students via the College’s email system with Appendix 12. The notice indicated that the hard copy of the ASR was available and in addition, informed the recipients of the web address where the ASR could be accessed.

MassBay has also provided copies of their 2011, 2012, and 2013 ASRs with Appendix 1. Appendix 16 provides proof of distribution of those ASRs.

Next the CAPS Committee developed internal campus safety and crime prevention policies and procedures. Once developed, the new policies were approved and then disseminated to the MassBay campus community. The policies and procedures were then included in the ASR. In addition, training and education sessions were provided based on

these policies. The policies and procedures under which MassBay operates are included in the statewide Code of Conduct and published in the Student Handbook online as well as in print. CAPS also developed Emergency Evacuation Procedures, an Emergency Notification System, Haven (an online sexual violence prevention program), and an in-house Rape Aggression Defense (RAD) program. MassBay has also initiated an array of in-house training sessions that address public safety issues and *Clery Act* compliance related topics, including such topics as “International Association of College Law Enforcement Administrators (IACLEA) Institutional Responsibilities for *Clery Act* Compliance” on 4/17/14 and “SaVE (VAWA) Act “What Does This Mean to Me?” on 9/19/14. The Department notes that MassBay submitted several documents in support of its corrective action claims, including the College’s 2011, 2012, and 2013 ASRs as well as its new internal policies and procedures.

Final Determination:

Finding #1 of the program review report cited MassBay for its persistent failure to produce ASRs. Specifically, the College failed to produce ASRs in calendar years 2008, 2009, and in all years prior to the review period. Upon being informed of these violations by the review team, MassBay officials began work on a 2010 ASR; however, the review team found numerous and significant errors and omissions in the report. As a result of these violations, MassBay was required to develop and implement new policies and procedures to govern the entire ASR production and distribution process. Then, in accordance with its new policies and procedures, the College was required to produce a 2014 ASR that included all of the statistical disclosures and policy, procedure, and programmatic information required under 34 C.F.R. §668.46(b) and to distribute the report to all enrolled students and current employees, if it had not already done so. If a 2014 ASR was published and distributed, the College was required to submit a copy of the report and evidence of active distribution as part of its response. Finally, MassBay was required to submit copies of its 2011-2013 ASRs with supporting documents to show that the statistical and policy disclosures contained therein were accurate and complete. In its response, MassBay concurred with the finding, described its remedial actions, and submitted documents in support of its claims. Per the response, additional revisions were made to the 2014 ASR based on guidance provided by the Department in the program review report.

The Department carefully examined MassBay’s narrative response and supporting documentation. Based on that review and the College’s admission of noncompliance, the ASR production and distribution violations that were identified in the initial finding are sustained. The review team’s examination also showed that the identified violations were, for the most part, satisfactorily addressed by MassBay’s revised 2014 ASR and its new internal policies and procedures. As such, the review team has determined that MassBay’s remedial action plan meets minimum requirements. The Department also recognizes that the College has undergone significant changes in leadership during the review period including the appointment of President John O’Donnell, and Director of Public Safety, Vincent O’Connell. The agency also notes that MassBay established the CAPS Committee to coordinate reforms and improvements to the College’s campus

safety and crime prevention program. The Department is hopeful that that these changes will result in improved campus safety operations and *Clery Act* compliance going forward. For these reasons, the Department has accepted MassBay's response and considers this finding to be closed for program review purposes. Nevertheless, the officials and directors of MassBay are put on notice that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed, MassBay is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to produce accurate and complete ASRs and to distribute them to students and employees is the most basic requirement of the *Clery Act* and is fundamental to the campus safety and crime prevention goals of the law. MassBay asserted that it has taken adequate remedial actions and that by doing so; it is now in compliance with the *Clery Act* as required by its Program Participation Agreement (PPA). Nevertheless, MassBay officials must understand that this violation deprived student and employees of important campus safety information to which they are entitled. For these reasons, the College is advised that its remedial efforts cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Because of the serious consequences of such violations, the Department strongly recommends that MassBay re-examine its campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal regulations. To that end, MassBay officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2011) as a reference guide for *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. MassBay can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49. MassBay management is also reminded that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in their ASRs. All institutions are currently obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were obligated to include all new required content in the 2014 ASR. The Department issued Final Rules on the VAWA amendments on October 20, 2014 and therefore, these regulations will go into effect on July 1, 2015, per the Department's Master Calendar. MassBay officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

**Finding #2: Drug and Alcohol Abuse Prevention Program Requirements Not Met:
Multiple Violations**

Citation Summary:

The DFSCA and the Department's Part 86 Regulations require each institution of higher education (IHE) to certify that it has developed and implemented a drug and alcohol abuse prevention program (DAAPP). The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each IHE must provide the following information in writing to all current students (enrolled for any type of academic credit except for continuing education units) and all current employees:

- *A written statement about its standards of conduct that prohibits the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees;*
- *A written description of legal sanctions imposed under Federal, state, and local laws and ordinances for unlawful possession or distribution of illicit drugs and alcohol;*
- *A description of the health risks associated with the use of illicit drugs and alcohol abuse;*
- *A description of any drug or alcohol counseling, treatment, and rehabilitation/re-entry programs that are available to students and employees; and,*
- *A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.*

The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll at a date after the initial distribution and for employees who are hired at different points throughout the year.

In addition, each IHE must conduct a biennial review to determine the effectiveness of its DAAPP and to ensure consistent enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation. The biennial review materials must be maintained by the IHE and made available to the Department upon request. 34 C.F.R. §§ 86.3 and 86.100.

Noncompliance Summary:

MassBay violated multiple provisions of the DFSCA. Specifically, MassBay failed to develop and implement a comprehensive DAAPP that meets Federal requirements and

also failed to publish a materially-complete DAAPP disclosure that summarizes the program. As a result of these violations, MassBay also failed to actively distribute a DAAPP disclosure to all current employees and students enrolled for academic credit. Although some of its publications do include information about drug and alcohol-related policies, MassBay officials were unable to produce any documentation or provide any assurances that the College ever complied with the specific requirements of the DFSCA during the period under review or at any point prior to it.

In addition, MassBay has persistently failed to conduct biennial reviews to: 1) assess the effectiveness of its DAAPP; 2) evaluate the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct related to drugs and alcohol; and, 3) identify areas requiring improvement or modification. Finally, as a consequence of the failure to conduct a biennial review, MassBay also repeatedly failed to produce reports of biennial review findings. Based on these violations, the Department finds that MassBay has never fully complied with the DFSCA during its participation in the Title IV, FSA programs.

Failure to comply with the DFSCA's DAAPP requirements deprives students and employees of important information regarding the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse. Failure to comply with the biennial review requirements also deprives the institution of important information about the effectiveness of its own drug and alcohol programs. Such failures may contribute to increased drug and alcohol abuse as well as an increase in drug and alcohol-related violent crime.

Required Action Summary:

As a result of these violations, MassBay is required to take all necessary corrective actions to address the violation identified above and all others identified during the preparation of its responses to this program review report. In addition, MassBay must, at a minimum, take the following actions:

- Develop and implement a substantive drug and alcohol abuse prevention program and publish a materially-complete DAPP disclosure that includes all of the required elements and summarizes the program. A copy of this document must accompany the College's response to this program review report;*
- Develop procedures for ensuring that the DAAPP disclosure is distributed to every current student who is enrolled for academic credit as well as every employee of MassBay. Once these procedures are developed, MassBay must distribute the disclosure in accordance with the DFSCA and its own policy. Credible proof of this mandatory distribution must be made part of the response to this program review report.*
- Conduct a biennial review to measure the effectiveness of its existing drug and alcohol programs and its new DAAPP if it has not already done so. MassBay must describe the research methods and data analysis tools that will be used to*

determine the effectiveness of the program. In addition, the report must identify the responsible official(s) who conducted the review. Finally, the report must be approved by the College's President and/or its Board;

- MassBay must also submit copies of the two most-recent biennial review reports that the College produced with its response to this program review report. It is the Department's understanding that no such reports were produced during or prior to the review period. If that is the case, institutional officials need only confirm that understanding. and,*
- MassBay must establish policies and procedures to ensure that all subsequent biennial reviews are conducted in a timely manner and are fully documented and to take all other necessary action to ensure that this violation does not recur. A copy of these policies and procedures must accompany the institution's submission of its biennial review report.*

Because the DFSCA went into effect in 1990, longstanding practice dictates that the biennial review is normally conducted in even-numbered years. While timely action is indicated, the Department understands that the issuance of this report was delayed for a period of time and also anticipates that the College will not be able to plan and conduct a substantive review by the end of 2014. As noted previously, the Department is also encouraged by the current administration's statements about improving the campus safety and drug and alcohol abuse prevention programs at MassBay. For these reasons, the College will be granted additional time to complete its biennial review. In its response, the College must, at a minimum, submit a detailed plan for the conduct of the review including information about the officials that will conduct the study and the methods and data sources that will be used during the study. The College must complete its biennial review by February 15, 2015 and its biennial review report of findings must be submitted to the Department by March 1, 2015.

As noted above, the exceptions identified in this finding constitute serious violations of the DFSCA that by their nature cannot be cured. MassBay will be given an opportunity to finally bring its overall drug and alcohol programs into compliance with the DFSCA as required by its PPA. However, MassBay is advised that these remedial measures, whether already in place or planned for the future, cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or additional corrective measures as a result.

Based on an evaluation of all available information including MassBay's response, the Department will determine if additional actions will be required and will advise the College accordingly in the FPRD.

Institutional Response:

In its official response, MassBay concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following:

The College failed to develop and implement a DAAPP or to publish a program disclosure during the review period. Starting in 2010, MassBay management asserted that the College began sending DAAPP disclosure statements to all students and employees on an annual basis. Per the response, the CAPS Committee determined that the most effective way to distribute the disclosure statement was to include it in the College's ASR, beginning with the publication of the 2011 ASR. This decision was made to ensure that the information was sent to the entire campus community, including all students and employees. MassBay's Appendix 28 provides their disclosure statement content that appears in their 2014 Clery ASR.

With its response, MassBay included a copy of its new DAAPP program materials, new DAAPP disclosure and distribution procedures, and its two most-recent biennial review reports. Both reports were produced in 2013 and cover the 2011-12 and the 2013-14 reporting periods, respectively. Both reviews detail the research methods and data analysis tools that are used to determine the effectiveness of the program. MassBay has indicated that the reviews were conducted by a committee representing relevant areas of the college and that the report produced is approved by the College President. MassBay's response also demonstrates that it has established policies and procedures to ensure that all subsequent biennial reviews are conducted in a timely manner and are fully documented. Each biennial review report commences with a description of the Drug Free Schools and Communities Act Alcohol and Other Drug program required policies for MassBay, including the Statements of Goals and Achievements, Procedures for Distribution, as well as Future Recommendations.

Final Determination:

Finding #2 of the program review report cited MassBay for multiple violations of the *DFSCA*. Specifically, it was determined that the College persistently failed to develop and implement a DAAPP that met Federal requirements. This exception applies to the program review period and all prior years. As a result, MassBay was not able to produce an annual DAAPP disclosure that summarized the nonexistent program and therefore, was also unable to ever distribute required program materials to enrolled students and current employees. Finally, the review team found that the College had never conducted biennial reviews to assess the effectiveness of its program and correspondingly, was unable to produce the required reports of findings and recommendations prior to the Department's site visit.

These separate and distinct violations necessarily follow from each other because the biennial review is primarily a study of the effectiveness of the DAAPP. Therefore, an institution cannot conduct a proper biennial review until it has a fully-functional DAAPP

in place and program requirements and standards of conduct are clearly communicated to all members of the campus community. As a result of these violations, MassBay was required to develop and implement a comprehensive DAAPP, produce and distribute an annual disclosure, and conduct a substantive biennial review as soon as initial program data was available. In its response, MassBay concurred with the finding, described its remedial actions, and submitted documents in support of its claims.

The Department carefully examined MassBay's narrative response and supporting documentation. Based on the Department's review and MassBay's admission of noncompliance, each of the violations identified in the initial finding are sustained. Indeed, the review team determined that the College failed to comply with any aspect of the *DFSCA* during or prior to the review period. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by MassBay's new DAAPP, new annual disclosure, two most-recent biennial review reports, and its new internal policies and procedures. As such, the Department determined that MassBay's remedial action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for program review purposes. Nevertheless, the officials and directors of MassBay are put on notice that the College must also take any other action that may be needed to address the deficiencies identified by the Department as well as any other deficiencies or weaknesses that were detected during the preparation of its official response, and/or as may otherwise be needed to ensure that these violations do not recur.

In this regard, MassBay officials are strongly advised that the College must continue to develop its new DAAPP, ensure that accurate and complete program materials are actively distributed to members of the campus community each year, and conduct substantive biennial reviews on the required schedule to regularly assess the effectiveness of the DAAPP. The College is reminded that it must produce a detailed report that includes detailed information about the conduct of each review, including information about the research methods used and outcomes reached. Care must also be taken to ensure that all findings and recommendations are supported by valid evidence. Finally, the report must be approved by the College's President and/or its board.

Although this finding is now closed, MassBay is specifically reminded that the exceptions identified above constitute serious and persistent violations of the *DFSCA* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. MassBay asserted that it has taken adequate remedial actions and that by doing so; it is now in compliance with the *DFSCA* as required by its PPA. Nevertheless, MassBay officials must understand that compliance with the *Clery Act* and the *DFSCA* is essential to maintaining a safe and healthy learning environment. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse are highly correlated to increased incidents of violent crime on campus. *DFSCA* violations deprive students and employees of important information regarding the educational, financial, health, and legal consequences of alcohol abuse and illicit drug use and deprive institutions of important information about the effectiveness of any drug and alcohol programming that may have been in place during the review period. For these reasons,

MassBay is advised that its remedial measures cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional remedial measures as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that MassBay re-examine its DAAPP policies and procedures on at least an annual basis and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the *DFSCA*. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the College's new policies and procedures.